BOMBAY REGULATION VIII OF 1827.[1]

[*1st January 1827.*]

Repealed in part, by Act 12 of 1873.

Application of s. 10 restricted (locally), by Bom. 4 of 1890, sec. 58 (*3*).

Adapted and modified by the Adaptation of Indian Laws Order in Council.

A Regulation to provide for the formal recognition of heirs, executors and administrators, and for the appointment of administrators and managers of property by the Courts.

Preamble. WHEREAS, at the same time that it is in general desirable that the heirs, executors or legal administrators of persons deceased should, unless their right is disputed, be allowed to assume the management or sue for the recovery for property belonging to the estate, without the interference of Courts of justice, it is yet in some cases necessary or convenient that such heirs, executors or administrators, in order to give confidence to persons in possession of, or indebted to, the estate to acknowledge and deal with them, should obtain a certificate of heirship, executorship, or administratorship, from the Zila Court ;

And whereas, whenever there is no person on the spot entitled or willing to take charge of the property of a person deceased, or when the right of succession is disputed between two or more claimants, none of whom has taken possession or where the heirs are incompetent to the management of their affairs and have no near relations entitled and willing to take charge on their behalf, or where a person possessed of property dies intestate and without known heirs, it is essential that the Zila Court should appoint an administrator for the management of the estate ; the following rules are therefore enacted [2]* * * * *.

CHAPTER I.

RULES FOR THE RECOGNITION OF HEIRS, EXECUTORS AND ADMINISTRATORS WHEN THERE IS A COMPETENT CLAIMANT.

Legal heir, etc., of person deceased competent to represent him without recognition from Court.

1. Whenever a person dies leaving property, whether moveable or immovable, the heir or executor, or legal administrator, may assume the management, or sue for the recovery, of the property, in conformity with the law or usage applicable to the disposal of the said property, without making any previous application to the Court to be formally recognized.

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[1] Bom. Reg. 8 of 1827 was declared by the Laws Local Extent Act, 1874 (15 of 1874), s. 5, to be in force in the whole of the Province of Bombay except as regards the Scheduled Districts, i.e., the village belonging to the following Mehwassi Chiefs :—

(1) The Parvi of Kathi.
(2) The Parvi of Nal.
(3) The Parvi of Singpur.
(4) The Walwi of Gaohalli.
(5) The Wassawa of Chikhli.
(6) The Parvi of Nawalpur.

As to Court-fees on certificates granted under this Regulation, *see* clause (*viii*) of s. 19, and article 12A of Sch. I of the Court-fees Act, 1870 (7 of 1870).

As to the application of certain provisions of the Indian Succession Act, 1925 (39 of 1925), to certificates granted under this Regulation, to applications made for such certificates and to the exhibition of inventories and accounts by holders of such certificates, *see* s. 390 of Act 39 of 1925.

The grant of probate or letters of administration under the Indian Succession Act, 1925 (39 of 1925), in respect of an estate supersedes any certificate previously granted under Part X of the said Act or under the Succession Certificate Act, 1889 or Bombay Regulation No. VIII of 1827, in respect of any debts or securities included in the estate, *see* sec. 215 of Act 39 of 1925.

As to grant of certificate under the Indian Succession Act, 1925 (39 of 1925), on production of a certificate granted under this Regulation, *see* s. 214 of that Act.

[2] The words " to take effect from such date as shall be prescribed in a Regulation to be hereafter passed for that purpose " were repealed by the Repealing Act, 1873 (12 of 1873).

But if such recognition requested,

proclamation will be issued.

2. *First.*—But if an heir, executor or administrator is desirous of having his right formally recognized by the Court, for the purpose of rendering it more safe for persons in possession of, or indebted to, the estate to acknowledge and deal with him, the Judge, on application, shall issue a proclamation, in the form contained in Appendix A, inviting all persons who dispute the right of the applicant to appear in the Court within one month from the date of the proclamation and enter their objections, and declaring that, if no sufficient objection is offered, the Judge will proceed to receive proof of the right of the applicant, and, if satisfied, grant him a certificate of heirship, executorship or administratorship.

Second.—[*Publication of proclamation.*] *Rep. Act XII of 1873.*

If no objection appears, recognition to be granted.

3. If, at the expiration of the time mentioned in the proclamation, no sufficient objection has been made, the Court shall forthwith receive such proof as may be offered of the right of the person making the claim, and, if satisfied, shall grant a certificate in the form contained in Appendix B, declaring him the recognized heir, executor or administrator of the deceased.

Objection appearing, to be examined,

and recognition given or refused accordingly.

4. *First.*—If, before the expiration of the time, any objection is made to the right of the person claiming as heir, executor or administrator, the Judge, on a day to be fixed (of which at least eight days' previous notice shall be given to the parties, shall summarily investigate the grounds of the objections on the one hand, and of the right claimed on the other, examining such witnesses or other evidence as may be adduced by the parties, and either grant or refuse a certificate, as the circumstances of the case may require.

If question is complicated or difficult, matter to be left for adjudication.

Second.—But if from the evidence adduced, it appears that the question at issue between the parties is of a complicated or difficult nature, the Judge may suspend proceedings in the application for a certificate until the question has been tried by a regular suit instituted by one of the parties.

Authenticity of wills and recognitions how certified.

5. Whenever an executor is formally recognised, under the rule contained in section 4, the authenticity of the will, if any, by which he is appointed, shall be proved; and the certificate of executorship shall be endorsed thereon.

6. [*Wills and recognitions to be registered.*] *Rep. Act XII of 1873.*

Recognized heirs, etc., competent to manage property.

7. *First.*—An heir, executor or administrator, holding the proper certificate, may do all acts and grant all deeds competent to a legal heir, executor or administrator, and may sue and obtain judgment in any Court in that capacity.

But recognition gives no title to property,

Second.—But, as the certificate confers no right to the property, but only indicates the person who, for the time being, is in the legal management thereof, the granting of such certificate shall not finally determine nor injure the rights of any person; and the certificate shall be annulled by the Zila Court, upon proof that another person has a preferable right.

nor relief from responsibility to claimants.

Third.—An heir, executor or administrator, holding a certificate, shall be accountable for his acts done in that capacity to all persons having an interest in the property, in the same manner as if no certificate had been granted.

Refusal of a recognition no judgment against claim of applicant.

8. The refusal of a certificate by the Judge shall not finally determine the rights of the person whose application is refused, but it shall still be competent to him to institute a suit for the purpose of establishing his claim.

CHAPTER II.

OF THE APPOINTMENT OF AN ADMINISTRATOR BY THE ZILA COURT, WHEN THERE IS NO HEIR OR EXECUTOR COMPETENT AND WILLING TO BE PLACED IN POSSESSION.

When heir, etc., is present but undetermined, or incompetent, Judge may appoint administrator, to be duly accountable when emergency at end.

9. Whenever there is no person on the spot entitled and willing to take charge of the property of a person deceased, where the right of succession is disputed between two or more claimants, none of whom has taken possession, or where the heirs are incompetent to the management of their affairs from infancy, insanity or other disqualification, and have no near relations entitled and willing to take charge on their behalf, the Judge, within whose jurisdiction such property is, may appoint an administrator for the management thereof, until the lawful heir, executor or administrator appears, or the right of succession is determined, or the disqualification of the heir is removed, as the case may be, when the Judge, on being satisfied of the facts, shall direct the administrator in charge to deliver over the property to such person, with a full account of all receipts and disbursements during the period of his administration.

If heir, etc., unknown, administrator to be appointed, and proclamation issued, and published.

[1]**10.** *First.*—Whenever any person dies intestate, and without known heirs, leaving property, the Judge, within whose jurisdiction the property is, shall appoint an administrator for the management thereof, and shall issue a proclamation in the form contained in Appendix C, calling upon the heir of the deceased or any person entitled to receive charge of the property, to attend and prefer his claim.

Second.—The proclamation shall be published, [2] * * * * and if the deceased was a Native of any district or country without the limits of the Court's jurisdiction, and the property is of the value of rupees one thousand (1,000) [2] * * * * * * or upwards, the proclamation shall also be published in the [2] * * * * [3][Official Gazette.]

Heirs, etc., appearing to be put in possession,

Third.—If any person appears and satisfies the Judge of his right to the possession of the property or any part of it as heir, executor, administrator or otherwise, it shall be delivered up to him, after deducting the necessary expenses of management.

and if no heir appears, reference to Sadr Diwani Adalat, who will grant time, or order sale and proceeds to be deposited.

Fourth.—But, if no person appears and establishes his right, the Judge, on the 31st December next after the completion of twelve months from the appointment of the administrator, shall make a report of the circumstances of the case to the Sadr Diwani Adalat, accompanied by an inventory and valuation of the property; and it shall be lawful for the Sadr Diwani Adalat either to direct the property to continue for a further period under the management of the administrator, or to be sold by him under the authority of the Court, and the proceeds to be deposited in the public treasury for the eventual benefit of all concerned.

Administrators appointed by Court to give security, and to be remunerated at discretion of Judge.

11. Whenever an administrator is appointed by the Judge under sections 9 and 10 of this Regulation, he shall, previously to entering upon the execution of his office, give security in a sum to be fixed by the Judge for the faithful discharge of his trust, and he shall be entitled to such remuneration as the Judge may fix for his trouble, but subject to modification by the Sadr Diwani Adalat, on the complaint of any person interested.

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[1] S. 10 does not apply to intestate property which is dealt with by a Magistrate under the Bombay District Police Act, 1890 (Bom. 4 of 1890), s. 58 (*3*).

[2] The words "in the manner prescribed in Reg. IV, A. D. 1827, section VIII, clause tenth", the words "local currency" and the words "Bombay Courier or other" were respectively repealed by the Repealing Act, 1873 (12 of 1873).

[3] The words "Official Gazette" were substituted for the words "Government news-paper" by the Adaptation of Indian Laws Order in Council.

APPENDIX A.

Form of Proclamation to be issued when a person applies to be recognized as heir, executor or administrator of one deceased.

PROCLAMATION.

IN THE COURT OF THE ZILA OF

WHEREAS *A.B.*, inhabitant of , died at on or about the day of , and whereas *C.D.*, inhabitant of , has presented an application to the Judge of the said zila for the purpose of being formally recognized as heir [executor *or* administrator, *as the case may be*] of the said *A.B.*, this is to give notice to all persons who may dispute the right of the said *C.D.*, as heir [executor *or* administrator, *as the case may be*] of the said *A.B.*, to appear in the Court of the said zila within one month from the date of this proclamation, there to enter their objections; and it is hereby declared that if no sufficient objection is offered before the expiration of that period, the said Judge will forthwith proceed to receive proof of the said *C.D.'s* right, and to grant him, provided he shall appear entitled thereto, a certificate of heirship [executorship *or* administratorship, *as the case may be*] of the said *A.B.*, deceased.

Dated at this day of .

(*Signed*) { *By the Judge,* / *Senior Assistant Judge,* / *or* / *Junior Assistant Judge.*

APPENDIX B.

Form of Certificate to be granted to the recognized heir, executor or administrator of one deceased.

IN THE COURT OF THE ZILA OF .

WHEREAS *A.B.*, inhabitant of , died at on or about the day of , and application was made by *C.D.*, inhabitant of , to the Judge of the said Court, to be formally recognized as heir [executor *or* administrator, *as the case may be*] of the said *A.B.*; and, whereas the usual proclamation having been issued, no sufficient objection was offered to the right of the said *C.D.*; and whereas the said *C.D.* thereupon gave proof to the satisfaction of the Court of his right to be recognized as heir [executor *or* administrator, *as the case may be*] of the said *A.B.*:

This, therefore, is to certify that the said *C.D.* is the recognized heir [executor *or* administrator] of the said *A.B.* deceased.

Dated at this day of .

(*Signed*) { *By the Judge,* / *Senior Assistant Judge,* / *or* / *Junior Assistant Judge.*

APPENDIX C.

Form of Proclamation to be issued when a person dies intestate, and without known heirs, leaving property.

PROCLAMATION

IN THE COURT OF THE ZILA OF

WHEREAS *A.B.*, inhabitant of , died at on or about the day of , leaving the following property at , within the said zila, namely, [*here specify the property*]; and whereas no will of the said *A. B.* has been found, nor is it known if he has any heirs: This is to give notice to all persons claiming to be heirs, or to be entitled to receive charge of the said property, to attend and prefer their claim in the said Court, in order that, on such claim being proved, the said property may be delivered up to them.

Dated at this day of

(*Signed*) { *By the Judge,*
Senior Assistant Judge,
or
Junior Assistant Judge.